THE HON'BLE SMT.JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

WRIT PETITION No.3314 OF 2002

Dt: 29.08.2005

Between:

M.Kanaka Durga Bhavani

D/o.M.V.Chalapathi Rao

Superintendent, D.E.E.Office Building

Lakdikapool, Hyderabad … PETITIONER

AND

Government of Andhra Pradesh

Rep.by its Secretary, Education Department

Secretariat, Hyderabad and others … RESPONDENTS

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ORDER: (per the Hon'ble Smt.Justice T.Meena Kumari)

With the consent of both the learned counsel, the Writ Petition itself is disposed of at the interlocutory stage.

This Writ Petition is filed by the petitioner to call for the records relating to the

common Judgment dated 04.01.2002 in O.A.Nos.4647, 5307 and 7167 of 1998 on the file of the A.P. Administrative Tribunal, Hyderabad and strike down the same insofar as observations made at para-11 of the Judgment that the applicant in the O.As (3rd respondent herein) shall remain senior and consequently to declare that the petitioner is entitled to remain as senior to the 3rd respondent-applicant on the basis of seniority list of Senior Assistants communicated in Proceedings dated 21.07.1998 as upheld by the Tribunal in the above Judgment with all attendant benefits.

The above-mentioned O.As were filed by the

3rd respondent herein.

It is the case of the petitioner that she was originally appointed as Junior Assistant in the Office of the District Educational Officer, Hyderabad on 16.01.1981 and was transferred to the Office of the Director of Adult Education on 17.05.1988 and subsequently promoted as Senior Assistant on 13.04.1989 and later promoted as Superintendent and presently working as such and that the 3rd respondent-applicant was originally appointed as Typist in the Office of the Project Officer, Adult Education Project, Khammam on 29.11.1984 and worked there upto 30.04.1987 and thereafter transferred to the Office of the Project Officer, A.E.E.Project, Bhadrachalam. Later, the

3rd respondent-applicant was promoted as Senior Assistant on 31.03.1989 by the Deputy Director of Adult Education without considering zonal seniority and transferred to the Director of Adult Education, A.P., Hyderabad on 27.06.1990 at her request and she joined the duty on 29.06.1990.

It is her further case that the 2nd respondent communicated the final seniority list of Senior Assistants by proceedings dated 21.07.1998 after duly considering the objections, wherein the name of the 3rd respondent-applicant was correctly shown at Sl.No.5 while the petitioner's name was shown at Sl.No.1 and the said proceedings were assailed by the 3rd respondent-applicant in O.A.No.5307 of 1998 before the Tribunal and the Tribunal gave interim direction directing the

3rd respondent-applicant to make a representation to the official respondents, who shall, after receipt of the representation shall examine the same and pass appropriate orders. The

3rd respondent-applicant accordingly made a representation on 10.08.1998 for restoration of her seniority. Thereupon, the 2nd respondent issued proceedings dated 18.08.1998 after duly considering her case with reference to the Rules and rejected her case for restoration of her seniority and also for promotion as Superintendent.

Thereafter, the 3rd respondent-applicant filed O.A.No.4647 of 1998 before the Tribunal for a declaration that she is entitled to be promoted as Office Superintendent in the Directorate. She also filed another O.A.No.7167 of 1998 before the Tribunal for declaring the action of the official respondents in issuing the proceedings dated 18.08.1998 rejecting her representation to restore her seniority and also to promote her as Superintendent as illegal. The claim of the 3rd respondent-applicant in all the three O.As is that she has to be conferred seniority from the date of her promotion and placed above the petitioner and consequently she is entitled for promotion as Superintendent ignoring the fact that she was transferred to the Directorate at her own request.

The Tribunal dismissed all the three O.As observing that the 3rd respondent-applicant shall remain as senior to one N.Satyanarayana. Aggrieved by the same, the petitioner has filed the present Writ Petition.

Heard the learned counsel and perused the impugned Judgment.

The Tribunal at paragraph 7 of the Judgment observed as follows:

> "Firstly, it is the specific contention of the Official Respondents that the applicant was transferred to the Directorate on 29-6-1990 as Senior Assistant at her request and to this effect, the request application of the applicant also has been filed as Annexure-I. A perusal of this application clearly shows that the applicant made a specific request to come over to the Directorate at Hyderabad as in her view, the transfer is essential for her. Same is the tenor of the application of Sri N.Satyanarayana who came to Directorate at his request. Considering this request of the applicant, she was transferred to the Directorate as Senior Assistant on 29-6-1990. Sri N.Satyanarayana also was transferred to the Directorate and he joined the Directorate on 20-7-1990, just about a month later to the applicant. As per Rule 35(b) of AP State & Subordinate Service Rules, since she was transferred on request, her seniority has been fixed with reference to the date of her joining duty in the Directorate as Senior Assistant. By this time, the unofficial Respondents who were already working in the

Directorate as Senior Assistants commenced their probation. As per Rule 4(2) of APMS Rules, to become eligible for promotion to the next higher post, one must put in a service for a minimum period of three years, and in no case it shall not be less than two years by 12-2-1979. When a vacancy of Superintendent arose, the same was filled up on 6-3-1991 by promoting Sri N.Satyanarayana who stands at S.No.6, one step below the applicant at S.No.5 in the seniority-list of Senior Assistants in the Directorate which was based on the dates of joining of the individuals in the Directorate. The unofficial Respondents 4 to 7 were shown at S.Nos. 1 to 4. For overlooking the promotion of the applicant at S.No.5, the reason given by the Respondents in their counter affidavit is that she has not completed three years of service in the category of Senior Assistant for promotion as Superintendent. This stand of the Official Respondents cannot be accepted for the reason that in the seniority list of Senior Assistants working in the Directorate at the time of filling up of the vacant post of Superintendent, the applicant is senior to Sri N.Satyanarayana. Hence, without considering the case of the applicant, considering the case of Sri Satyanarayana and promoting him as Superintendent is illegal. Hence, for the purpose of seniority in the category of Senior Assistants in the Directorate, the applicant shall be treated as Senior to Sri N.Satyanarayana."

Admittedly, the 3rd respondent-applicant was transferred to the Directorate as Senior Assistant and she joined the duty on 29.06.1990 while Sri N.Satyanarayana was transferred as Senior Assistant to the Directorate and he joined on 20.07.1990 i.e. about a month later to the 3rd respondent-applicant at their request. In these circumstances, the Tribunal has rightly observed that the 3rd respondent-applicant shall remain as senior to Sri N.Satyanarayana. Apart from this, the second respondent had filed counter-affidavit stating that the petitioner has already been promoted as Superintendent from 14-12-1998 onwards and that the petitioner will not be affected by the observations of the Tribunal. Hence, we do not find any ground to interfere with the impugned Judgment of the Tribunal insofar as the observation that the 3rd respondent-applicant shall be senior to Sri N.Satyanarayana. The Writ Petition is devoid of merits and the same is dismissed. No order as to costs.

(T.MEENA KUMARI, J)

(P.LAKSHMANA REDDY, J)

Dt: 29.08.2005

bsv/lvl